



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1996

Ms. Carol T. McDonald
McDonald & McDonald
P.O. Drawer H
Edna, Texas 77957-1508

OR96-0624

Dear Ms. McDonald:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39329.

The Jackson County Hospital District (the "district") received a request for a copy of an unsigned contract between DeTar Hospital ("DeTar") and Dr. Eugenio Hernandez that the Jackson County Board voted to adopt and a copy of a contract between Jackson County Hospital and Dr. Hernandez and drafted and presented to Executive Committee on March 1, 1996. You state that you are providing a copy of the contract between the district and Dr. Hernandez to the requestor. However, you claim that the unsigned contract is excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claimed and have reviewed the document at issue.

You claim that DeTar opposes the district's release of the unsigned contract under section 552.110. Pursuant to section 552.305 of the Government Code, this office informed DeTar and Dr. Hernandez of the request and of their obligation to claim why any claimed exceptions to disclosure apply to the requested information. Dr. Hernandez did not respond. A representative of DeTar telephoned this office and stated that DeTar did not object to release of the requested information.

Section 552.110 excepts from disclosure a trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act in applying the second prong of section 552.110. In *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that

for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the Government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *Id.* at 770. The district claims:

Release of DeTar's contract will result in the unwillingness of DeTar and other third parties to provide to the [d]istrict useful and helpful information of a proprietary or sensitive nature in the future, because those parties will know that if so provided, their own contracts would be subject to public scrutiny and compromise their competitive positions.

We believe that DeTar's willingness to release the requested information belies the district's arguments. Moreover, the district has failed to show how release of the requested information would impair the district's ability to obtain necessary information in the future. We therefore conclude that the district may not withhold the requested information under section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39329

Enclosures: Submitted documents

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